LIBRARY,
SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-631

HOWARD JOHNSON COMPANY, INC.
Petitioner
v
DETROIT LOCAL JOINT EXECUTIVE BOARD, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO
Respondent

BRIEF IN OPPOSITION TO GRANT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

SHELDON L. KLIMIST
2460 First National Building
Detroit, Michigan 48226
Attorney for Respondent

Of Counsel:
DONALD F. SUGERMAN
MILLER, KLIMIST, COHEN, MARTENS & SUGERMAN, P.C.
2460 First National Building
Detroit, Michigan 48226

Interstate Brief & Record Co., 1036 Beaubien St., Detroit, Michigan 48226
WO. 2-8745—WO. 2-8732

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Counter-Statement of the Case	3
Argument Against Granting the Writ	7
1. The Sixth Circuit Correctly Decided the Issue of Successorship	7
2. Successorship Cases Arising Under 29 USC 185 Are Not Governed by NLRB Cases Arising Under 29 USC 158	9
3. There Is No Conflict Among the Circuit Courts of Appeal	11
4. The Decision of the Sixth Circuit Court of Appeals Ordering Arbitration Comports With National Labor Policy Objectives	13
Conclusion	15

LIST OF AUTHORITIES CITED

Cases

	Page
Carey v Westinghouse Electric Corporation, 375 US 261 (1964)	14
Collyer Insulated Wire, A Gulf and Western System Co, 192 NLRB No 150 (1971)	14
Drivers, Warehouse and Dairy Employees Union Local No 75 v Wisconsin Employment Relations Board, 138 NW2d 180 (Wisc S Ct 1965), cert den 384 US 906 (1966)	7
Georgetown Stainless Mfg Corp, 198 NLRB No 41 (1972)	8
Lincoln Private Police, Inc, 189 NLRB No 103 (1971)	8
Monroe Sander Corporation v Livingston, 377 F2d 6 (2nd Cir 1967), cert den 389 US 831 (1967)	8, 9, 12, 13
NLRB v Alamo White Truck Service, Inc, 273 F2d 238 (5th Cir 1959)	8
NLRB v Aluminum Tubular Corporation, 299 F2d 595 (2nd Cir 1962)	8
NLRB v Burns International Security Services, Inc, 406 US 272 (1972)	7
Owens-Illinois Inc v District 65, Retail, Wholesale and Department Store Union, AFL-CIO, 276 FSupp 740 (SD NY 1967), aff'd 393 F2d 932 (2nd Cir 1968)	12

Page

Printing Specialities & Paper Products Union No. 447, IPP & AU v Pride Papers-Aaronson Bros Paper Corp, 445 F2d 361 (2nd Cir 1971), cert den 404 US 1001 (1971) 11

Retail Clerks, Locals 128 and 633 v Lion Dry Goods Inc, 369 US 17 (1962) 10

J P Stevens and Co Inc, 163 NLRB 217 (1967) 10

United Steelworkers of America v Reliance Universal Inc, 335 F2d 891, (3rd Cir 1964) 14

United Steel Workers of America v American Manufacturing Co, 363 US 564 (1960) 14

United Steel Workers of America v Enterprise Wheel & Car Corp, 363 US 593 (1960) 14

United Steelworkers of America v Warrior & Gulf Navigation Co, 363 US 574 (1960) 14, 15

John Wiley & Sons, Inc v Livingston, 376 US 543 (1964) 7, 8

Statutes

Labor Management Relations Act (Public Law 101, 80th Cong. 1st Sess., 29 USC 141 et seq.) 2

Section 157 10

Section 158 ..... 9, 10, 11

Section 158(a)(3) 10

Section 158(a)(5) 10

Section 159(a) 10

Section 185 ..... 9, 10, 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-631

HOWARD JOHNSON COMPANY, INC.
Petitioner

v

DETROIT LOCAL JOINT EXECUTIVE BOARD, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO
Respondent

BRIEF IN OPPOSITION TO GRANT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Respondent, Detroit Local Joint Executive Board, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO (hereinafter "Union"), hereby files its opposition to granting the writ of certiorari in the above-captioned matter.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit (Pet App 1a-12a) is not yet officially reported. The memorandum opinion of the United States District Court for the Eastern District of Michigan, Southern Division (Pet App 13a-26a) is not officially reported at this time.

JURISDICTION

The judgment of the Court of Appeals was entered on July 12, 1973. The petition for a writ of certiorari was filed on October 10, 1973. The jurisdiction of this Court is invoked under 28 USC 1254(1).

QUESTIONS PRESENTED

1. Whether an employer who otherwise satisfies all criteria determinative of successorship status avoids such status merely by denying continued employment to its predecessor's employees.

2. Whether the extent to which a successor employer is bound by its predecessor's collective bargaining agreement is properly for consideration by an arbitrator.

STATUTES INVOLVED

The relevant provisions of the Labor Management Relations Act (29 USC 141 et seq.) are set forth in the petition.

COUNTER-STATEMENT OF THE CASE

In 1959 and 1960, Petitioner, Howard Johnson Company, Inc. (hereinafter Howard Johnson), entered into two franchising agreements with P. L. Grissom & Son, Inc., a Michigan corporation (hereinafter Grissom). The first, denoted "Operator's Agreement," enabled Grissom to operate a Howard Johnson restaurant.[1] The second, denoted "License Agreement," enabled Grissom to operate a Howard Johnson motor lodge. (Joint App on Appeal 78-87.)

The two facilities, which are on adjacent sites in Belleville, Michigan, were operated under the provisions of the franchise agreements until July 24, 1972. Pursuant to such franchise agreements, Howard Johnson had the authority to exercise detailed control over Grissom's day to day operation of the restaurant and the motor lodge.

The tone of the relationship between Howard Johnson and Grissom can be seen in paragraph number one of the Operator's Agreement. It provided, in pertinent part, as follows:

> ". . . [Howard Johnson] shall determine and approve standards of quality for all commodities bought, used or sold on the . . . premises, standards of service in connection with their sale, and standards of quality and utility for all furnishings and equipment used on said premises in connection with such sale, and [Grissom] shall conform to said standards, and [Howard Johnson] may supervise the operation of [Grissom's] business at the . . . premises. [Grissom] shall continuously operate the

[1] Actually, the operator's agreement ran to Belleville Restaurant Co. which was controlled by Grissom. For convenience Grissom will be treated as owner and operator of both the restaurant and motor lodge.

> business on the premises upon such days and during such hours as [Howard Johnson] shall determine. [Howard Johnson's] supervisory personnel shall have the right to enter upon the premises at any time for the purpose of examining the same, conferring with [Grissom's] employees, and inspecting and checking merchandise, furnishings, equipment, and operating methods, in all divisions and departments, and determining whether the business is being conducted in accordance with the aforesaid standards and in accordance with this agreement."

Other provisions in the agreements restricted the products sold on the premises, regulated business operations and circumscribed financing. Further, Grissom was prohibited from disposing of "any interest in the said premises or any part thereof, or in the business thereon conducted, or in the equipment or furnishings located thereon, without in each instance first offering the same to [Howard Johnson], exclusively . . ."

Grissom operated the restaurant with thirty-nine employees and the motor lodge with fourteen employees. All fifty-three employees were represented for the purposes of collective bargaining by the Union. Grissom and the Union were parties to successive collective bargaining agreements covering separate units for the restaurant and for the motor lodge.

The last collective bargaining agreement between Grissom and the Union covering employees at the motor lodge was effective for the period beginning August 1, 1968 and ending August 1, 1972. The last collective bargaining agreement between the aforenamed parties covering restaurant employees was for the period January 1, 1968 to March 31, 1971 and was extended by addendum until May 1, 1974.

Both collective bargaining agreements between Grissom and the Union provided for final resolution of disputes by arbitration, contained a no-strike pledge and included a provision relating to the sale or transfer of operations. The "successor" clause provides:

> "This Agreement shall be binding upon the successors, assigns, purchasers, lessees or transferees of the Employer whether such succession, assignment or transfer be affected voluntarily or by operation of law or by merger or consolidation with another company provided the establishment remains in the same line of business."[2] (Joint App on Appeal 103.)

On June 16, 1972, Grissom entered into a sales agreement with Howard Johnson whereby Grissom sold to Howard Johnson "chattels, fixtures, furniture, furnishings, equipment, machinery, appliances, implements, utensils, silverware, china, linen inventory and all other personal property" belonging to Grissom and located in or used in conjunction with the restaurant and the motor lodge; leased to Howard Johnson the restaurant and the motor lodge; and surrendered to Howard Johnson the franchise agreements.

Grissom warranted that at the time of sale it would have no creditors. However, Howard Johnson agreed to assume a liability owed by Grissom to a wholly owned subsidiary of Howard Johnson and further to assume and pay four separate commercial contracts that Grissom had entered into with various companies. (Joint App on Appeal 71, 76.)

---

[2] A similar provision appears on one of several pages of the restaurant agreement omitted from the joint appendix through inadvertance. Those pages are attached hereto in the Appendix.

On July 11, 1972, Grissom and Howard Johnson entered into a supplement to the aforesaid sales agreement whereby the parties agreed that Howard Johnson "would not recognize and assume any labor agreements between [Grissom] and any labor organizations" and further that Howard Johnson "does not assume any obligations or liabilities of [Grissom's] resulting from any labor agreements or unfair labor practices." (Joint App on Appeal 90.)

On or about July 9, 1972, Grissom notified unit employees at both the restaurant and the motor lodge "that as of midnight, July 23, 1972, your employment . . . shall be terminated . . ." Contemporaneously, Howard Johnson began soliciting employment applications by, among other things, posting notices in the restaurant and motor lodge. Between July 18 and July 23, 1972, Howard Johnson hired thirty-three employees to work in the restaurant, nine of whom were in the restaurant bargaining unit represented by the Union. During that same period, Howard Johnson hired twelve employees to work in the motor lodge, none of whom were in the bargaining units represented by the Union.

At midnight on July 23, 1972, ownership and operation of the restaurant and motor lodge changed from Grissom to Howard Johnson. Notwithstanding the change in ownership of the enterprises, Howard Johnson conducted business operations identical in every respect to those of Grissom; it used the same trade name, occupied the same location, utilized the same facilities, used the same personal property, provided the same services and the same "products," employed the same approximate number of employees who performed the same type of jobs, and serviced the same customers. Thus, the only difference in operations was Howard Johnson's choice of personnel.

The District Court found Howard Johnson to be a successor of Grissom and ordered it to arbitrate with the Union issues arising under the collective bargaining agreements, referred to above, relating to Howard Johnson's obligations thereunder. The Court of Appeals affirmed.

ARGUMENT AGAINST GRANTING THE WRIT

1. The Sixth Circuit Correctly Decided the Issue of Successorship.

In *John Wiley & Sons, Inc* v *Livingston,* 376 US 543, 551 (1964) the Court set forth "substantial continuity of identity in the business enterprise before and after a change" as the test for determining successorship status. In reaching a determination on the issue of successorship, "[t]he answer to the problem does not rest on any one element but the combination of many." *Drivers, Warehouse and Dairy Employees Union Local No 75* v *Wisconsin Employment Relations Board,* 138 NW2d 180 (Wisc S Ct 1965), cert den 384 US 906 (1966). Successorship determinations turn upon the "precise facts involved" in each case. *NLRB* v *Burns International Security Services, Inc,* 406 US 272 (1972).

Applying the precise facts of this case to the "continuity of enterprise" standard, the Sixth Circuit relied upon the following factors to find successorship:

(a) Howard Johnson purchased and utilized substantially all of the assets of Grissom.

(b) Howard Johnson continued the identical business, at the same location and used the same trade name as had Grissom.

(c) Howard Johnson commenced operations momentarily after Grissom ceased such operations.

(d) Howard Johnson provided substantially the same products and services as had Grissom.

(e) Howard Johnson through the vehicle of franchise agreements possessed close control over Grissom's management and activities of the restaurant and motor lodge (Pet App 6a).

Howard Johnson's refusal to hire most of Grissom's employees did not affect its successorship status for several reasons. First, in *Wiley* the Court stated,

> "Although Wiley was substantially larger than Interscience, relevant similarity and continuity of operations across the change in ownership is adequately evidenced by the wholesale transfer of Interscience employees to the Wiley plant, apparently without difficulty." (p 481).

Thus, the hiring of employees is not the controlling factor but rather may be evidence of similarity of operations. *Monroe Sander Corporation* v *Livingston*, 377 F2d 6, (2nd Cir 1967), cert den 389 US 831 (1967). It is but one of the elements to be considered in reaching a conclusion on successorship. The hiring of most of the predecessor's employees has been found in and of itself insufficient to establish successorship. *NLRB* v *Aluminum Tubular Corporation*, 299 F2d 595 (2nd Cir 1962); *NLRB* v *Alamo White Truck Service, Inc.*, 273 F2d 238 (5th Cir 1959); *Georgetown Stainless Mfg Corp*, 198 NLRB No 41 (1972); *Lincoln Private Police, Inc*, 189 NLRB No 103 (1971).

Second, a "successor's" failure to hire its "predecessor's" employees cannot be determinative where said "failure is the nub of the dispute." *Monroe Sander*, 377 F2d at 12. The Sixth Circuit recognized the logic of this position when it stated,

> "Howard Johnson's argument here attempts to pull itself up by its own bootstraps. It argues that it need not arbitrate the refusal to hire Grissoms' employees because it is not a successor. It is not a successor, because it did not hire a majority of Grissoms' employees."

Finally, "[t]he objectives of national labor policy, reflected in established principles of federal law, require that the rightful prerogative of owners independently to rearrange their businesses . . . be balanced by some protection to the employees from a sudden change in the employment relationship." There will be no balancing of these competing interests and no protection whatsoever to employees if the hiring of employees by the employer is to be the controlling factor. As the Sixth Circuit said,

> "If Howard Johnson sought to retain the agreement negotiated by Grissom, it would hire a majority of Grissoms' employees. If, on the other hand, it wished to disregard the collective bargaining agreement, it would simply hire none or at best only a few of the former employees. The decision whether to hire the predecessor's employees should turn upon other and more relevant considerations."

The "more relevant considerations" are precisely those found by the Sixth Circuit and alluded to above.

2. Successorship Cases Arising Under 29 USC 185 Are Not Governed by NLRB Cases Arising Under 29 USC 158.

Proceedings under section 185 involve civil suits for violation of contracts between an employer and a labor organization brought in federal or state courts. Such suits involve the application or interpretation of agreements and not the establishment of collective bargaining rights

or obligations. Indeed, a section 185 suit may be initiated by a minority union. *Retail Clerks, Locals 128 and 633* v *Lion Dry Goods Inc*, 369 US 17 (1962).

On the other hand, proceedings under section 158 involve unfair labor practices wherein an administrative agency seeks to vindicate public rights rather than private ones between competing parties. Thus, under section 158(a)(5) the NLRB endeavors to remedy an employer's refusal "to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a)." And section 159(a) makes the representative selected by a majority of unit employees the exclusive representative of all unit employees.

The fundamental distinctions between the nature of section 185 proceedings and those under section 158 render inapplicable Howard Johnson's contention that the test of successorship must be identical in a suit to compel arbitration and an administrative action to compel recognition and bargaining. In the latter instance, the NLRB's concern with sections 157, 158 and 159(a) will not ordinarily permit it to direct a "successor" employer to bargain where its work force (absent section 158(a)(3) discrimination) is composed of less than a majority of it "predecessor's" employees. The Board appears to treat such a situation as a new unit restricting its rights to order bargaining.[3] The Courts, on the other hand, are concerned not with statutory bargaining rights but with contract rights involving the application of various provisions and need not give

[3] *Cf J P Stevens and Co Inc*, 163 NLRB 217 (1967) where the Board in denying a bargaining order said, "In view of the majority principle in Section 9(a) of the Act, we have serious doubts that the policies of the Act require or permit the issuance of a bargaining order where majority status has never been attained."

overriding consideration to the question of a union's majority status. *Lion Dry Goods.*

Howard Johnson's contention that *Burns* superimposes on *Wiley* a requirement that arbitration can only be ordered when the "successor's" work force is composed of a majority of its "predecessor's" employees, confuses the distinctions noted above between proceedings under section 158 and those under section 185.

3. There Is No Conflict Among The Circuit Courts Of Appeal.

Howard Johnson asserts that there is a clear conflict between the decision in this case and the position adopted by several Circuit Courts of Appeal. It relies for this proposition on refusal to bargain cases arising before the NLRB. The distinguishing features of suits for breach of contract and administrative proceeding for refusal to bargain have been referred to above. It is submitted that the cited cases originating before the NLRB are inapposite. Similarly, Howard Johnson's contention that this case is in conflict with decisions of other Circuits involving suits to compel arbitration is not well founded.

Printing Specialties & Paper Products Union No. 447, IPP & AU v *Pride Papers-Aaronson Bros Paper Corp,* 445 F2d 361 (2d Cir 1971) cert den 404 US 1001 (1971), involved a consolidation. Roitman Paper Co. operated a plant with seven employees who were represented for bargaining by Pressmen. Roitman was consolidated with Aaronson Bros. Paper Co. that operated a plant with twenty-six employees who were represented for bargaining by Teamsters. The court said,

> "[C]ontinuity in the business operations is the essential test for successorship . . . In effect, all

> that really occurred in the instant case is that Roitman closed down his small business and discharged his employees. *He then acquired an interest in a new business at a different location, with different employees.*" (Emphasis supplied.)

Furthermore, *Pride Papers* was not a suit to compel arbitration. It was a suit for declaratory judgment that the collective bargaining agreement was still in effect at the new consolidated plant.

In *Owens-Illinois Inc* v *District 65, Retail, Wholesale and Department Store Union, AFL-CIO*, 276 FSupp 740 (SD NY 1967), aff'd 393 F2d 932 (2nd Cir 1968), the court examined the "precise facts" of the case to determine the question of "substantial continuity of identity in the business enterprise." Significantly, hiring of the "predecessors" employees was but one of a myriad of factors that led the court to conclude that continuity was not present. Among the factors the court noted were the following: (a) The "successor" clause between Atlantic and District 65 was contained in a secret memorandum unknown to Owens-Illinois, (b) Atlantic was adjudicated a bankrupt, (c) Atlantic's production employees were all discharged and thereafter its plant was inoperative for almost six months, (d) Atlantic's Plan of Arrangement provided that its sale of assets to Owens-Illinois was "free and clear of any and all rights, claims, etc., (e) thirty-one of the original thirty-three employees of Owens-Illinois were transferred to the plant in question from its nearby plant, (f) the operations of the two plants became fully integrated and (g) the employees at the two plants were represented by another union.

The "substantial continuity of identity" test was applied in *Monroe Sander*. Thus, the Second Circuit stated.

> "Here, it appears that the district Court was correct in finding that there was 'any substantial

> continuity of identity' between the Long Island City and Newark operations. *Both plants were located in the New York metropolitan area, both were engaged in the same line of business, the jobs in each were seemingly similar and Petrochemical planned to have the New Jersey plant service Sander's customers.* Appellants point to the fact that none of the former Sander employees were hired in New Jersey. The relevance of the successor's engaging its predecessor's employees, however, is to show similarity of operations." (Emphasis supplied.)

In commenting upon *Monroe Sander* in the subsequent *Pride Papers* case, the court said,

> "In Monroe Sander Corp. v Livingston [citation omitted] we found a successorship although none of the former employees were hired by the successor corporation. In that case, however, *continuity was evidenced by many factors, not the least of which was the fact that the transaction involved 'a parent corporation's termination of one subsidiary plant and the purchase of another.'*" (Emphasis supplied.)

The "many factors" evidencing continuity are present in the immediate case. Moreover, the franchisor-franchisee relationship here is sufficiently similar to the parent-subsidiary relationship in *Monroe Sander* to make the distinction raised by Howard Johnson one of form rather than substance.

4. The Decision of the Sixth Circuit Court of Appeals Ordering Arbitration Comports With National Labor Policy Objectives.

The balancing of employer rights to rearrange their businesses as against employee rights to protection from changes in the employment relationship dictates arbitration as the vehicle for avoiding industrial strife and promoting industrial peace. This Court has recognized and spoken strongly in favor of arbitration as the best method for resolving labor management disputes. *United Steelworkers of America* v *American Manufacturing Co*, 363 US 564 (1960); *United Steelworkers of America* v *Warrior & Gulf Navigation Co*, 363 US 574 (1960); *United Steelworkers of America* v *Enterprise Wheel & Car Corp*, 363 US 593 (1960).

"The preference of national labor policy for arbitration as a substitute for tests of strength between contending forces could be overcome only if other considerations compellingly so demanded. . . . " *Wiley*, 376 US at 549-550. Indeed, the preference for arbitration as a means of preserving industrial peace is so great that it has been ordered even when it appeared to be a remedy of questionable value. *Carey* v *Westinghouse Electric Corporation*, 375 US 261 (1964).

There are legitimate policy reasons for leaving the applicability of substantive provisions in the collective bargaining agreement to the arbitrator. This Court has recognized the special "experience and competence" of an arbitrator in resolving industrial disputes. *Warrior & Gulf*, 363 US at 581-582. The NLRB has recognized the "special skill and experience" of the arbitrator in contract inter-

pretation by its policy of defering to arbitration. *Collyer Insulated Wire, A Gulf and Western System Co,* 192 NLRB No 150 (1971). The arbitrator may devise "flexible procedures" that will promote industrial peace (*Wiley,* 376 US at 551 n.5) for a situation not adequately provided for in the collective bargaining agreement. *Warrior & Gulf Co,* 363 US at 580-581 (1960).

The Third Circuit in directing arbitration in *United Steelworkers of America* v *Reliance Universal Inc,* 335 F2d 891, 895 (3rd Cir 1964), recognized the flexibility of arbitration and stated:

> "In any event, we find implicit in the guarded language of the *Wiley* opinion, recognition and concern that new circumstances created by the acquisition of a business by a new owner may make it unreasonable or inequitable to require labor or management to adhere to particular terms of a collective bargaining agreement previously negotiated by a different party in different circumstances. Although the pre-existing labor contract indicates the structure of labor relations and the established practice of the shop at the beginning of the new proprietorship, an arbitrator of a subsequent complaint charging unwarranted departure from that scheme may properly consider any relevant new circumstances arising out of the change of ownership, as well as the provisions of and practices under the old contract, in achieving a just and equitable settlement of the grievance at hand. The requirements of the contract remain basic guides to the law of the shop, but the arbitrator may find that equities inherent in changed circumstances require an award in a particular controversy at variance with some term or terms of that contract."

Thus, the Sixth Circuit, quoting *Reliance Universal,* ordered arbitration as the most reasonable and equitable forum for balancing employer and employee rights and interests in successorship situations. That remedy is fully warranted and appropriate in view of the national labor policy favoring arbitration.

CONCLUSION

Howard Johnson's position that the identity of the employee work force is the sole determinative factor in deciding the question of successorship is untenable. The test of successorship is "substantial continuity of identity of the buiness enterprise before and after the change." The identity of the work force is only one factor to be considered along with many others present in this case.

Were Howard Johnson's position to be adopted, the employees' jobs would be completely dependent upon the employer's desire either to retain or to disregard the existing collective bargaining relationship. If it wanted to retain the relationship, the employer would hire a majority of the existing work force. If, on the other hand, it wanted to disregard the relationship it would not hire a majority of the existing work force. In short, Howard Johnson would retain for itself the unilateral power and authority to decide whether or not it shall be a successor with the responsibilities incumbent upon successor employers. Such a rule of law would not permit the balancing of employer-employee rights and interests in successorship cases. Only the rights and interests of the employer would prevail. Such an inequitable rule would be contrary to the policy of our national labor laws which favor the balancing of competing interests and arbitration as the best means of resolving those interests.

For the above reason, the writ of certiorari should be denied.

Respectfully submitted,

SHELDON L. KLIMIST
Attorney for Detroit Local Joint Executive Board, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO
2460 First National Building
Detroit, Michigan 48226

Of Counsel:

DONALD F. SUGERMAN
MILLER, KLIMIST, COHEN,
MARTENS & SUGERMAN, P.C.
2460 First National Building
Detroit, Michigan 48226

APPENDIX

Section 7. A copy of this contract shall be posted in a prominent place to which the public shall not have access.

Section 8. A bulletin board wil lbe provided for the sole use of the Union for posting notices of meetings and other proper Union activities.

Article XII

Concessionnaire Clause

Section 1. In the event the Employer leases or turns over to any person or persons the operation of any department of his establishment, the Employer shall give the Union ten (10) days' notice in advance of such contemplated lease or arrangement. The Employer shall also require of such tenant or other person as a condition precedent to such tenancy or arrangement that such tenant or other person shall fully observe all provisions of this Agreement and that his failure to do so completely and entirely shall represent a breatch of tenancy for which eviction shall occur. Furthermore the Employer shall be personally liable for any and all damages resulting from the failure of the lessee or other person to observe any and all terms of this Agreement.

Article XIII

Sale or Transfer

Section 1. It shall be the duty of the Employer to inform the Union in writing at least ten (10) days in advance of any sale, transfer or other changes in ownership. Failure on the Employer's part to so notify the Union

shall render the Employer liable for any subsequent failure of the new owner to pay the employees on the basis of the provisions of this contract, said liability to extend for the period of one (1) week after the change in ownership or until the Union receives notice of such change, whichever occurs later.

Section 2. This Agreement shall be binding upon the employer's successors, assigns, purchasers, lessees or transferees whether such succession, assignment or transfer be affected voluntarily or by operation of law; and in the event of the employer's merger or consolidation with another company or companies, this Agreement shall be binding upon the merged or consolidated company, provided the establishment remains in the same line of business.

Article XIV

No Strike—No Lockout

Section 1. Under no circumstances will the union cause or permit its members to cause nor will any member of the bargaining unit take part in any strike, sit-down, stay-in or slowdown in any establishment of the Employer or any curtailment of work or restriction or production or interference with the operations of the Employer or any picketing or patrolling during the terms of this Agreement. In the event of a work stoppage, other curtailment of production, picketing or patrolling, the Employer shall not be required to negotiate on the merits of the dispute which gave rise to the stoppage or curtailment until same has ceased.

Section 2. The Employer will not lockout any employees during the term of this Agreement.

Article XV

Management Rights

Section 1. Nothing in this Agreement shall be construed to limit or impair the right of the Employer to exercise its own discretion on all of the following matters, whatever may be the effect upon employment, when in its discretion it may determine it advisable to do any or all of the following:

to manage its business generally,
to decide the number and location of stores,
to decide all equipment to be used,
to decide all items to be served or sold,
to decide the method and means of sale of products,
to determine work schedules for employees,
to hire, layoff, assign, transfer and promote employees (a complaint by local 234 of improper classification shall result in a joint job-content analysis to determine the validity of same),
to determine the qualifications of employees,
to determine and redetermine job content,
to determine the starting and quitting time,
to determine the number of hours to be worked,
to make such reasonable rules and regulations not in conflict with this Agreement, as it may from time to time deem best for the purpose of maintaining order, safety and/or effective operation and after advance notice thereof to the union and the employees, to require compliance therewith by employees,
to discipline and discharge employees for cause.